

AMENDED IN SENATE APRIL 4, 2016

SENATE BILL

No. 1312

Introduced by Senator Wieckowski

February 19, 2016

An act to amend Sections 1122, 1137, 1170.1, 1190, 1190.1, 1195.1, 1196.1, 1200, 1201, 1201.5, and 1202 of, to add Sections 1103, 1190.2, 1190.3, 1190.5, 1191.1, 1195.2, 1196.2, and 1204 to, to add and repeal Section 1190.4 of, and to repeal and add Section 1191 of, the Harbors and Navigation Code, relating to harbors and navigation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1312, as amended, Wieckowski. Bar pilotage rates.

(1) Existing law provides for the licensing and regulation of pilots for the Monterey Bay and the Bays of San Francisco, San Pablo, and Suisun, by the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun in the Transportation Agency. Existing law establishes pilotage rates and surcharges that are paid to licensed pilots by vessels piloted in those bays. Existing law establishes those pilotage rates and surcharges, and provides for changes to them based on the number of pilots licensed by the board and recommendations by the board to the Legislature. Existing law requires each licensed pilot to submit a monthly account to the board of all moneys received by the pilot for pilotage services.

This bill would revise and recast those provisions and would require that certain surcharges be separately identified on the pilots' invoices and in their monthly account to the board. The bill would, until January 1, 2021, additionally authorize a technology surcharge, not to exceed a cumulative amount of \$1,200,000, to recover pilots' costs for

navigation software, hardware, and equipment authorized by the board on or after January 1, 2017. The bill would require the board to submit a schedule of all pilotage rates and surcharges to the Office of Administrative Law for publication in the California Regulatory Notice Register and to post that schedule on the board's Internet Web site. The bill would require an independent audit of all charges collected by pilots to be conducted annually by a public accountant selected by the board.

(2) Existing law requires the Board of Pilot Commissioners to review and evaluate pilotage expenses in making recommendations to the Legislature to adjust certain pilotage rates. Existing law establishes procedures for any party directly affected by those rates to petition the board for a public hearing. Existing law requires the board, at the conclusion of the hearings, to review and evaluate the evidence and to submit to the Secretary of the Senate and the Chief Clerk of the Assembly a copy of its findings and recommendations for a final determination.

Existing law requires each vessel to pay a board operations surcharge to compensate the board and the Transportation Agency for the services and incidental expenses of the board and agency. Existing law requires those moneys to be deposited in the Board of Pilot ~~Commissioner's~~ *Commissioners'* Special Fund and continuously appropriates those moneys for the compensation and expenses of the board and its officers and employees.

This bill would instead require the hearing on a petition to be before an administrative law judge, as provided, who would act as a finder of fact. The bill would prescribe procedures for the conduct of those hearings, the review of evidence, and the filing of decisions. The bill would require the board to review and evaluate the administrative law judge's decision and either submit the decision to the Secretary of the Senate and the Chief Clerk of the Assembly or prepare and submit a written statement of its reasons for not doing so. The bill would require the administrative law judge to be compensated by the board from revenues from the board operations surcharge. By authorizing the expenditure of continuously appropriated funds for a new purpose, the bill would make an appropriation.

(3) Existing law requires that moneys collected from a pilot trainee surcharge and a pilot continuing education surcharge be deposited into the Board of Pilot ~~Commissioner's~~ *Commissioners'* Special Fund and continuously appropriates those moneys for pilot trainee and pilot continuing education programs, respectively.

This bill would create the Pilot Trainee Special Fund, require moneys collected from the pilot trainee surcharge to be deposited into that fund, and continue to continuously appropriate those moneys for pilot trainee programs. The bill would also create the Pilot Continuing Education Special Fund, require moneys collected from the pilot continuing education surcharge to be deposited into that fund, and require those moneys, upon appropriation, to be used for pilot continuing education programs.

(4) Under existing law, a pilot who is carried to sea against the pilot's will or unnecessarily detained on board a vessel, as provided, is entitled to receive \$600 per day, plus expenses, from the owner, operator, or agents of the detaining vessel.

This bill would increase that amount to \$2,028 per day.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to improve the
2 process by which bar pilotage rates and charges are set, managed
3 and maintained, and published by the Board of Pilot
4 Commissioners. It is further the intent of the Legislature that the
5 provisions of this act will reflect the actual rates and charges paid
6 by vessels operating in Monterey Bay, and the Bays of San
7 Francisco, San Pablo, and Suisun. It is not the intent of the
8 Legislature that this act will result in the increase of any pilotage
9 rates or charges currently in effect.

10 SEC. 2. Section 1103 is added to the Harbors and Navigation
11 Code, to read:

12 1103. The Legislature finds and declares all of the following:

13 (a) Transparency and accountability regarding how the board
14 operates and makes its decisions is critical to gaining and retaining
15 the confidence of the public and serving the ratepayers affected
16 by its decisions.

17 (b) In order to ensure and promote the highest level of safety
18 in pilotage and to eliminate competition between state-licensed
19 pilots on the basis of the rate of charges to vessels, the state enacts
20 statutes that set a tariff of charges and levies that must be paid by
21 vessels for the provision of pilotage services by a pilot licensee.

(c) The economic benefits of ocean-going vessels' safe navigation to our ports are essential to our day-to-day lives and fundamentally affect every California family and business. Because of the importance that ocean-going vessels play in our economy, the pilotage tariff schedule set forth in this division, its management, and any recommendations for the amendment of existing pilotage rates should be maintained and implemented in a manner that is transparent and accountable to the public.

(d) The greater and more unfettered the public's power in an important component of our economy, the greater the public's interest in monitoring the exercise of that power. Accordingly, the conduct of the public's business by the board is of the highest public interest.

SEC. 3. Section 1122 of the Harbors and Navigation Code is amended to read:

1122. (a) A pilot carried to sea against the pilot's will, or unnecessarily detained on board a vessel when a pilot vessel is in attendance to receive the pilot, shall receive two thousand twenty-eight dollars (\$2,028) per day while so carried to sea or detained, plus reimbursement for any expenses incurred by the pilot in returning to the pilot station.

(b) The owner, operator, and agents of the detaining vessel are jointly and severally liable for paying the amount specified in subdivision (a).

SEC. 4. Section 1137 of the Harbors and Navigation Code is amended to read:

1137. (a) The account required pursuant to Section 1136 shall show all of the following:

- (1) The name of each vessel piloted.
 - (2) The name of each vessel for which pilotage has been charged or collected.
 - (3) The amount charged to or collected for each vessel.
 - (4) Any rebates made and allowed and for what amounts.
 - (5) The amount of the fees and surcharges not collected pursuant to Section 1193.
 - (6) The depth of each vessel's draft and its highest gross tonnage.
 - (7) Whether the vessel was inward or outward bound.
- (b) The board shall record the accounts in full detail in a book prepared for that purpose. The account book is a public record.

1 (c) The board shall cause an independent audit of all charges
2 collected by pilots pursuant to this division to be conducted
3 annually by a public accountant selected by the board.

4 SEC. 5. Section 1170.1 of the Harbors and Navigation Code
5 is amended to read:

6 1170.1. In determining the number of pilots needed, pursuant
7 to Section 1170, the board shall take into consideration the findings
8 and declarations in Sections 1100, 1101, and 1102, the results of
9 an audit made pursuant to, and the factors specified in, Section
10 1203, the industry's current economic trends, fluctuations in the
11 number of vessel calls, the size of vessels, whether the need for
12 pilotage is increasing or decreasing, the 1986 manpower study
13 adopted by the board, and the results of the study required pursuant
14 to Section 1196.5.

15 SEC. 6. Section 1190 of the Harbors and Navigation Code is
16 amended to read:

17 1190. (a) (1) Every vessel spoken inward or outward bound
18 shall pay a rate of bar pilotage through the Golden Gate and into
19 or out of the Bays of San Francisco, San Pablo, ~~and~~

20 ~~(1) Eight dollars and eleven cents (\$8.11) and~~ Suisun of ten
21 dollars and twenty-six cents (\$10.26) per draft foot of the vessel's
22 deepest draft and fractions of a foot pro rata, and an additional
23 charge of ninety-two and four hundred twenty-three thousandths
24 mills (\$0.092423) per high gross registered ton.

25 (2) *A minimum charge for bar pilotage shall be six hundred*
26 *sixty-two dollars (\$662) for each vessel piloted.*

27 (3) *The vessel's deepest draft shall be the maximum draft*
28 *attained, on a stillwater basis, at any part of the vessel during the*
29 *course of that transit inward or outward.*

30 (b) The rate specified in subdivision (a) is the bar pilotage rate
31 and that rate alone shall apply to a pilotage that passes through the
32 Golden Gate to or from the high seas to or from a berth within an
33 area bounded by the Union Pacific Railroad Bridge to the north
34 and Hunter's Point to the south. The rate for pilotage to or from
35 the high seas to or from a point past the Union Pacific Railroad
36 Bridge or Hunter's Point shall include both the bar pilotage rate
37 as specified in subdivision (a) and an additional movement fee as
38 specified pursuant to Section 1191.

39 (c) The rate established in paragraph (1) of subdivision (a) shall
40 be for a trip from the high seas to dock or from the dock to high

1 seas. The rate specified in Section 1191 shall not be charged by
2 pilots for docking and undocking vessels.

3 SEC. 7. Section 1190.1 of the Harbors and Navigation Code
4 is amended to read:

5 1190.1. Every vessel that uses a pilot under this division while
6 navigating the waters of Monterey Bay shall pay the rate provided
7 by Section 1190.

8 SEC. 8. Section 1190.2 is added to the Harbors and Navigation
9 Code, to read:

10 1190.2. (a) In addition to the rate specified in Section 1190,
11 there may be an incremental rate of additional mills per high gross
12 registered ton as is necessary and authorized at the direction of the
13 board if, after a public meeting conducted in accordance with the
14 requirements of the Bagley-Keene Open Meeting Act (Article 9
15 (commencing with Section 11120) of Chapter 1 of Part 1 of
16 Division 3 of Title 2 of the Government Code), the board
17 determines that there has been a catastrophe or natural disaster
18 that has resulted in significant, unexpected cost increases that are
19 necessary to restore pilot services to customers, repair, replace, or
20 restore damaged pilot facilities or equipment, or to comply with
21 government agency orders resulting from a declared disaster.

22 (b) The incremental mill rate charge authorized by this section
23 shall be identified as a catastrophic event surcharge on the pilots'
24 invoices and separately accounted for in the accounting required
25 by subdivision (b) of Section 1136.

26 (c) Proceeds from the catastrophic event surcharge shall be used
27 only to recover the pilots' costs related to the catastrophe or natural
28 disaster underlying the incremental mill rate charge, and the
29 surcharge shall cease to be collected upon full recovery of those
30 costs.

31 SEC. 9. Section 1190.3 is added to the Harbors and Navigation
32 Code, to read:

33 1190.3. (a) There shall be an incremental rate of additional
34 mills per high gross registered ton as is necessary and authorized
35 by the board to recover the pilots' costs of obtaining new pilot
36 boats and of funding design and engineering modifications for the
37 purposes of extending the service life of existing pilot boats,
38 excluding costs for repair or maintenance. The board may adjust
39 the incremental rate to reflect any associated operational savings
40 resulting from the modification of pilot boats under this section,

1 including, but not limited to, reduced repair and maintenance
2 expenses.

3 (b) The incremental mill rate charge authorized by subdivision
4 (a) shall be identified as a pilot boat surcharge on the pilots'
5 invoices and separately accounted for in the accounting required
6 by subdivision (b) of Section 1136.

7 (c) Net proceeds from the sale of existing pilot boats shall be
8 used to reduce the debt on the new pilot boats and any debt
9 associated with the modification of pilot boats under this section.

10 SEC. 10. Section 1190.4 is added to the Harbors and Navigation
11 Code, to read:

12 1190.4. (a) There shall be a movement fee as is necessary and
13 authorized by the board imposed to recover a pilot's costs for the
14 purchase, lease, or maintenance of navigation software, hardware,
15 and ancillary equipment that is authorized by the board as
16 reasonable and necessary on or after January 1, 2017.

17 (b) The software, equipment, and technology covered by this
18 section shall be used strictly and exclusively to aid in piloting on
19 the pilotage grounds.

20 (c) The movement fee authorized by this section shall be
21 identified as a navigation technology surcharge on a pilot's invoices
22 and separately accounted for in the accounting required by
23 subdivision (b) of Section 1136.

24 (d) The cumulative amount of the surcharge collected pursuant
25 to this section shall not exceed one million two hundred thousand
26 dollars (\$1,200,000).

27 (e) The board shall review and adjust as necessary the navigation
28 technology surcharge authorized by this section at least quarterly.

29 (f) This section shall remain in effect only until January 1, 2021,
30 and as of that date is repealed, unless a later enacted statute, that
31 is enacted before January 1, 2021, deletes or extends that date.

32 SEC. 11. Section 1190.5 is added to the Harbors and Navigation
33 Code, to read:

34 1190.5. The board shall submit to the Office of Administrative
35 Law for publication in the California Regulatory Notice Register
36 and shall post on its Internet Web site the schedule of all pilotage
37 rates and surcharges in effect pursuant to Sections 1159.2, 1165,
38 1190, 1190.2, 1190.3, ~~and 1190.4~~ 1190.4, 1195, and 1196 as the
39 "BAR PILOTAGE TARIFF."

1 SEC. 12. Section 1191 of the Harbors and Navigation Code is
2 repealed.

3 SEC. 13. Section 1191 is added to the Harbors and Navigation
4 Code, to read:

5 1191. Any ship movement or special operation that does not
6 constitute bar pilotage shall be subject to, and shall pay, the rate
7 specified in the schedule of pilotage rates for bay and river pilotage
8 services, as adopted by the Legislature in Section 2 of Chapter 765
9 of the Statutes of 2002, consistent with the board's adoption or
10 rate recommendations in May 2002.

11 SEC. 14. Section 1191.1 is added to the Harbors and Navigation
12 Code, to read:

13 1191.1. The board shall submit to the Office of Administrative
14 Law for publication in the California Regulatory Notice Register
15 and shall publish on its Internet Web site, the schedule of all
16 pilotage rates for ship movement or special operations that do not
17 constitute bar pilotage, as described in Section 1191, *and*
18 *applicable surcharges* as the "BAY AND RIVER PILOTAGE
19 TARIFF."

20 SEC. 15. Section 1195.1 of the Harbors and Navigation Code
21 is amended to read:

22 1195.1. (a) The moneys charged and collected each month
23 from the pilot trainee surcharge pursuant to Section 1195 shall be
24 paid to the Pilot Trainee Special Fund established pursuant to
25 Section 1195.2. The moneys shall be used only to fund the pilot
26 trainee training program referred to in subdivision (h) of Section
27 1171.5 and Section 1195.3.

28 (b) Information regarding moneys remitted to the Pilot Trainee
29 Special Fund collected from the surcharge authorized pursuant to
30 Section 1195, or otherwise collected by the board for that purpose,
31 and information regarding moneys spent as pilot trainee training
32 program expenses authorized by Section 1195.3 shall be made
33 available to the public upon request and to the board or its finance
34 committee.

35 SEC. 16. Section 1195.2 is added to the Harbors and Navigation
36 Code, to read:

37 1195.2. (a) The Pilot Trainee Special Fund is hereby created
38 within the State Treasury. All moneys received by the board from
39 the surcharge authorized by Section 1195 shall be accounted for
40 at the close of each month to the Controller in the form the

1 Controller may prescribe and, at the same time on the order of the
2 Controller, all these moneys shall be paid into the State Treasury
3 to the credit of the Pilot Trainee Special Fund.

4 (b) Notwithstanding Section 13340 of the Government Code,
5 the moneys in the fund are continuously appropriated for carrying
6 out the purposes specified in Section 1195.1.

7 (c) Except as provided by this division, moneys in the General
8 Fund or any other state fund shall not be transferred to the Pilot
9 Trainee Special Fund or otherwise used to support the board or to
10 pay the debts, obligations, or encumbrances of the board, its
11 licensees, or trainees.

12 SEC. 17. Section 1196.1 of the Harbors and Navigation Code
13 is amended to read:

14 1196.1. (a) The moneys charged and collected each month
15 from the pilot continuing education surcharge pursuant to Section
16 1196 shall be paid to the Pilot Continuing Education Special Fund
17 created pursuant to Section 1196.2. The moneys shall be used only
18 to fund the pilot continuing education program referred to in
19 subdivision (h) of Section 1171.5 and Section 1196.3.

20 (b) Information regarding moneys collected from the surcharge
21 authorized pursuant to Section 1196, or otherwise collected by the
22 board for that purpose, and information regarding moneys spent
23 as pilot continuing education expenses authorized by Section
24 1196.3 shall be made available to the public upon request and to
25 the board or its finance committee.

26 SEC. 18. Section 1196.2 is added to the Harbors and Navigation
27 Code, to read:

28 1196.2. (a) The Pilot Continuing Education Special Fund is
29 hereby created within the State Treasury. The fund shall receive
30 all proceeds from the surcharge authorized by Section 1196.
31 Moneys in the fund may be used by the board, upon appropriation,
32 for continuing education for pilots as provided in Section 1196.1.

33 (b) Except as provided in this division, moneys in the General
34 Fund or any other state fund shall not be transferred to the Pilot
35 Continuing Education Special Fund or otherwise used to support
36 the board or to pay the debts, obligations, or encumbrances of the
37 board, its licensees, or trainees.

38 SEC. 19. Section 1200 of the Harbors and Navigation Code is
39 amended to read:

1 1200. (a) The board may make recommendations to the
2 Legislature regarding potential amendments to the pilotage rates
3 that are specified in Sections 1190 and 1191.

4 (b) The board shall, from time to time, review pilotage expenses
5 and establish guidelines for the evaluation and application of these
6 expenses regarding its recommendations for adjustments in rates.

7 SEC. 20. Section 1201 of the Harbors and Navigation Code is
8 amended to read:

9 1201. (a) Any party directly affected by pilotage rates
10 established under this chapter may petition the board for a public
11 hearing on any of the matters set forth in Section 1200.

12 (b) Within 10 days from the filing of the petition the board shall
13 call public hearings to be held not less than 30 nor more than 60
14 days of the date of call for the purpose of holding an evidentiary
15 hearing on the petition. The board shall schedule this evidentiary
16 hearing before an administrative law judge experienced with
17 ratemaking from either the Office of Administrative Hearings or
18 the Administrative Law Judge Division of the Public Utilities
19 Commission. *Hearings.*

20 (c) The board shall give notice of the hearings to all interested
21 parties who have requested the notification. All interested parties
22 shall have the right to submit comments and evidence in response
23 to a petition prior to the public hearings.

24 (d) The evidentiary hearing shall be a quasi-judicial proceeding
25 held before an administrative law judge who shall act as a finder
26 of fact. The petitioning party shall have the burden of proving, by
27 a preponderance of the evidence, all of the facts upon which the
28 petition is based.

29 (e) At the conclusion of the hearing or hearings, the
30 administrative law judge shall issue a decision setting forth
31 recommendations, findings, and conclusions. The decision shall
32 be supported by findings of fact on all issues material to the
33 decision, and the findings of fact shall be based on the evidence
34 in the record developed by the parties before the administrative
35 law judge. Any recommendation to approve the petition or
36 modification in order to partially approve the petition shall be
37 accompanied by a written explanation of each part of the decision
38 or changes made to the petition in the decision.

39 (f) The decision of the administrative law judge shall be filed
40 with the board and served on all parties without undue delay, but

1 not later than 60 days after the matter has been submitted for
2 decision.

3 (g) The board shall review and evaluate the findings and
4 recommendations in the administrative law judge's decision and
5 all of the evidence obtained and, within 30 days from the filing of
6 the decision, shall either submit to the Secretary of the Senate and
7 the Chief Clerk of the Assembly a copy of the administrative law
8 judge's decision, findings, and recommendations, supported by a
9 transcript of those proceedings, or prepare and submit to the
10 Secretary of the Senate and the Chief Clerk of the Assembly a
11 written statement of its reasons for not submitting the decision.

12 SEC. 21. Section 1201.5 of the Harbors and Navigation Code
13 is amended to read:

14 1201.5. (a) The administrative law judge and board shall not
15 consider any written evidence for the purpose of considering
16 pilotage rates unless 10 or more copies of the evidence have been
17 deposited with the board as public documents by the party
18 petitioning for a rate adjustment 30 or more days prior to the date
19 set for the commencement of the hearing.

20 (b) The administrative law judge and board shall not consider
21 any written evidence at the hearing from any party responding to
22 the petition unless the evidence is deposited with the board 10 or
23 more days prior to the date set for the commencement of the
24 hearing.

25 SEC. 22. Section 1202 of the Harbors and Navigation Code is
26 amended to read:

27 1202. (a) Notwithstanding any other law, any meeting of the
28 board or hearing by an administrative law judge at which the rates,
29 charges, and levies subject to this division are to be imposed,
30 changed, or discussed shall be open and public, and a transcript
31 of any such meeting shall be prepared and kept by the board.

32 (b) Public hearings for the purpose of investigating
33 recommendations and findings related to a petition for a change
34 in pilotage rates shall be conducted in accordance with the
35 Bagley-Keene Open Meeting Act (Article 9 (commencing with
36 Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of
37 the Government Code) and a full record shall be kept of all
38 evidence offered.

39 (c) No officer, employee, or agent of the board shall participate
40 in the decision of any factually related petition proceeding,

1 including participation in or advising the administrative law judge
2 as to findings of fact, conclusions of law, or orders, including as
3 a witness or declarant regarding a petition. Nothing in this
4 subdivision prohibits an administrative law judge from asking for
5 an officer, employee, or agent of the board to appear as a witness
6 in open session, unless the officer, employee, or agent has a conflict
7 of interest or is otherwise prohibited by statute from participating
8 in the proceeding.

9 (d) Ex parte communications with the administrative law judge
10 adjudicating the petition or any members of the board regarding
11 a petition filed under this division are prohibited, including any
12 oral or written communications concerning procedural matters,
13 except for procedural communications with the administrative law
14 judge or the board's executive director, if the ex parte
15 communications are in writing and transmitted to all other
16 interested parties on the same day as the original communication
17 with the administrative law judge or executive director. Written
18 ex parte communications shall be part of the final record of the
19 proceeding made available to the Secretary of the Senate and Chief
20 Clerk of the Assembly, but shall not be made available to members
21 of the board prior to its final action on a decision by an
22 administrative law judge.

23 SEC. 23. Section 1204 is added to the Harbors and Navigation
24 Code, to read:

25 1204. The Office of Administrative Hearings—~~or the~~
26 ~~Administrative Law Judge Division of the Public Utilities~~
27 ~~Commission~~ shall be compensated at cost by the board for costs
28 associated with the conduct of a hearing or other matters as required
29 by this chapter. Any such expense shall be funded by revenues
30 received by the board from the board operations surcharge, as
31 described in Section 1159.2. The board shall ensure that an
32 administrative law judge has been fully compensated pursuant to
33 this section.